

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF PUBLIC SAFETY

In the Matter of the Discontinuance of
Deputy Registrar #157, d.b.a.
D.J. & M., Incorporated

FINDINGS OF FACT
CONCLUSIONS,
RECOMMENDATION,
AND MEMORANDUM

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The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on January 22, 1997. The hearing reconvened on January 23. The hearing took one and one-half days. The record closed at the end of the hearing on January 23, 1997.

Appearing on behalf of the Department of Public Safety was Steven H. Alpert, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103-2040.

Appearing on behalf of Deputy Registrar #157 was George R. Serdar, of the firm Messerli & Kramer, P.A., 1800 Fifth Street Towers, 150 South Fifth Street, Minneapolis, Minnesota 55402-4218.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 (1996), the final decision of the Commissioner of Public Safety shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Commissioner Donald E. Davis, 445 Minnesota Street, Suite 1000, North Central Life Tower, St. Paul, Minnesota, 55101-2156.

STATEMENT OF ISSUE

Should the commission of Deputy Registrar # 157 be discontinued for cause because of alleged violations of Minn. Stat. §§ 168.10 subd. 3 (5) and 297B.06 (1994) regarding the submission of an erroneous Application to Title/Register a Vehicle to the Department of Public Safety

Based on all of the files and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. D.J. & M., Incorporated has been Deputy Registrar #157 for approximately thirteen years. It is located in Apple Valley, Minnesota. Paul Heil is the President of D.J. & M, and his wife Joanne Heil is the secretary. Prior to incorporation, Paul Heil was deputy registrar #157 for three years. Deputy Registrar #157, among other things, is an agency of the Department of Public Safety (hereinafter the "Department") for registering motor vehicles. For each vehicle, either new or used, processed by Deputy Registrar #157, it receives a commission of \$3.50.

2. On January 8, 1996 Jack Heil, nephew of Paul Heil, agreed to purchase a new 1995 Eagle Vision from Larry Reid's Bloomington Chrysler Plymouth Jeep Eagle dealership. This was the first new car Jack Heil had purchased. He was told to come back in two days to sign the final financing documents and pick up his car.

3. To finance the vehicle Jack had taken a loan from Firstar Bank of Minnesota to cover the purchase price of the vehicle, the sales tax, registration fee and warranty. (Exhibit 5).

4. Carole Rickards was a new car biller at Larry Reid's on January 10, 1996. She testified that the usual process when someone purchases a new car from the dealer is to take the title document, a Manufacturer's Statement of Origin (commonly referred to as a "MSO"), and write on the backside the name of the purchaser and the dealer. This signifies the transfer of ownership from the dealer to the purchaser. (Exhibit 3).

5. The dealer usually takes the filled-out MSO along with the "Application to Title/Register a Vehicle" (commonly known by its form name, the "PS2000"), and forwards it to the state or to a deputy registrar. (Exhibit 1). Larry Reid's would typically send documentation from a number of vehicles, new and used, to a deputy registrar, along with sufficient funds to pay for the sales tax and registration fees owed to the state on each vehicle.

6. It is rare for the purchaser to request the MSO and personally go to a deputy registrar to register the vehicle and get plates. That, however, is what Jack Heil did on January 10, 1996. Jack, who was thirty years old but relatively unsophisticated, wanted to give his business to his uncle out of family loyalty. Jack's father (who was Paul Heil's brother) had suggested it to Jack, and both agreed it would be a nice gesture. Jack did not know what amount, if any, his uncle received for each registration transaction. Jack was unaware that he was only contributing \$3.50 to his uncle by this act. The sole motivation for the act was this notion of family loyalty. There was no intent to gain any financial advantage, nor was there any intent to defraud or "cut corners".

7. Jack Heil arrived at his uncle's business late in the morning of January 10, 1996. He had with him a copy of the purchase agreement from Larry Reid's (exhibit

2) and the loan agreement between himself and Firststar Bank of Minnesota, N.A. (exhibit 5).

8. Jack met his Aunt Joanne Heil at the counter of the Deputy Registrar's office. Jack explained to her that he wanted to register the vehicle and receive the plates today. She looked at Jack's paperwork and told him he needed the MSO from the dealer. She also told him his uncle was out and would be back shortly.

9. Jack waited for his uncle to return. When his uncle returned he told Jack that he needed the MSO from Larry Reid's. Jack Heil then went to Larry Reid's and asked for the MSO.

10. At Larry Reid's Jack Heil informed Carole Rickards' supervisor, Christie Mattson, that his uncle Paul Heil was a deputy registrar and that Jack wanted to register his car at his uncle's business.

11. Accordingly, Christie Mattson directed Carole Rickards to fill in the typewritten portion and sign the back of the MSO. Miss Mattson then gave the MSO to Jack Heil. Miss Rickards acknowledges that this transaction was very unusual, but since the monies for the sales tax and the registration fee remained under her control, she saw no harm in releasing the MSO and allowing Jack Heil to deal with his uncle.

12. Jack Heil then returned to Deputy Registrar #157 and met with his Uncle Paul Heil. Paul produced a blank PS2000, and the two of them completed it at the deputy registrar's office.

13. This car purchase was Jack Heil's first new car purchase. He did not understand the registration procedure and what fees were due to whom. All he knew was that he had taken out a loan to cover the cost of the vehicle, including sales tax, registration costs and extended warranty.

14. He relied upon his uncle to properly process the registration materials.

15. Paul and Jack Heil discussed the payment of both the sales tax and the registration fee. Jack had enough money to write a check for the registration fee, but he did not have enough to write a check for both the registration fee and the sales tax. Paul Heil was satisfied that Larry Reid's, who Paul knew would receive the loan money from Firststar Bank, would somehow pay the sales tax.

16. Jack Heil made out a check for the \$281.50 registration fee and gave it to his uncle. Jack Heil did not pay the sales tax.

17. Paul Heil then filled in Section D of the PS2000 as it appears in Exhibit 1. In the space on the left hand side of the section where line 5 says "less tax paid to another state", Paul Heil filled in the amount \$1113.26. Paul Heil did this because there

was no other box or blank to use in order to indicate that the sales tax was due, but would be paid by another party (Larry Reid's).

18. Paul Heil then gave Jack the appropriate documents to indicate the car was registered with the State of Minnesota. Jack then took the proof of registration with him and returned to Larry Reid's to take delivery of his new vehicle.

19. At Larry Reid's, Jack produced the proof of registration that indicated he had paid the registration fee of \$281.50. Larry Reid's then put his reimbursement for the registration fees in line for payment. A reimbursement check in the amount of \$281.50 was sent to Jack Heil on January 15, 1996. (Exhibit 7).

20. At no time did Jack Heil attempt to seek reimbursement from Larry Reid's for the sales tax due in the amount of \$1113.26.

21. At no time did Paul Heil attempt to seek reimbursement from Larry Reid's for the sales tax due in the amount of \$1113.26.

22. A Deputy Registrar, as part of its responsibilities to the State, collects all the fees and paperwork for processing the registration of motor vehicles. A Deputy Registrar has 24 hours from when the fees and documents are collected from the taxpayer to forward them to the State for final processing.

23. Deputy Registrar #157 had in place a process whereby any transaction received at the front counter of the office was entered in the computer terminal at the front desk. That information then was stored on another computer's hard disk drive in the basement. Each day Heidi Halberg, an employee of Deputy Registrar #157, would cross check the documentation and fees received with the information on the basement computer from the previous day, and prepare a summary report for submission to the State along with the money and the paperwork.

24. After finishing the transaction with Jack Heil, Paul Heil collected the documents, the MSO, PS2000 and purchase agreement and alerted Heidi Halberg to the irregularity on the PS2000 concerning the sales tax. He told her not to worry about it, that Larry Reid's would be paying the sales tax. Paul Heil then stapled the MSO, PS2000 and the purchase agreement together. Normally, a purchase agreement is not included in the paperwork submitted by a Deputy Registrar to the state, at least not in the case of an instate dealer selling to an instate resident. However, Paul Heil did include the purchase agreement in this case because it evidenced the fact that the sales tax had been financed. In fact, Heil highlighted the sales tax figure on the purchase agreement, using a yellow highlighter.

25. The following day Heidi Halberg cross checked the documents with the daily register inputs. The documents were then forwarded to the Department of Public Safety where they were again cross checked by Department personnel. An individual in the processing group alerted Larry Ollila, the Assistant Manager for Title and

Registration, that the PS2000 indicated the sales tax had been paid to an outstate dealer but the purchase agreement attached was from a Minnesota dealer to a Minnesota resident. It was also noted that the purchaser had the same last name as the Deputy Registrar. Further processing of the title to the vehicle was suspended pending an investigation. (Exhibit 14).

26. Larry Ollila found this transaction to be far out of the ordinary. Purchase agreements are not commonly attached to the applications when the purchase is made by a Minnesota resident from an instate dealer. More importantly, when a sale is from an instate dealer to an instate resident, the sales tax is to be collected by the Deputy Registrar, and there is no reason for the sales tax to have been paid to another state. All of these circumstances made Ollila suspect that Paul Heil and Jack Heil were attempting to defraud the state by avoiding the payment of the sales tax.

27. In mid-January 1996 Christine Ulbrich, an Examining and Inspection Specialist in the Driver and Vehicle Services Division, was asked to contact Larry Reid's and investigate this transaction. On January 19, 1996, she telephoned Larry Reid's and spoke with Jan, the used car clerk. Miss Ulbrich asked why the tax had not been paid. Jan replied that Carole Rickards was the one to talk to about this transaction but that Carole was out of the office for a few days. Jan did, however, locate a copy of the check sent to Jack Heil reimbursing him for \$281.50 for the registration fees. She faxed a copy of the check to Miss Ulbrich. (Exhibit 7).

28. On the morning of January 22, 1996, Larry Ollila telephoned Paul Heil and demanded an immediate meeting with him. Heil asked if it could wait until the afternoon, but Ollila said it had to be right away. Soon thereafter, Ollila and Gene Froelich, a Regional Field Representative for the Division, arrived at Heil's office. Paul Heil did not deny filling in the PS2000 as it was filed with the State. (Exhibit 1). They asked Paul Heil why he did not collect the sales tax and he replied because it had been collected by the dealer, who would pay it to the state. Ollila told Heil that the state viewed fraud to be a very serious matter. Heil became upset, and pointed out that attaching the purchase agreement and highlighting the sales tax number was not consistent with an attempt to defraud. Ollila became upset as well, and the meeting ended on a sour note, with Ollila telling Heil that the state would be investigating further.

29. A few days later, Christine Ulbrich spoke with Carole Rickards on the telephone. Miss Rickards was surprised that the sales tax had not yet been paid. On January 23, 1996 she sent a check for \$1116.76 and a copy of an amended PS2000 to the State. (Exhibit 8). The money had come from the bank to the dealer some time previously, and had been placed in a tax account at Larry Reid's. At no time had it been withdrawn from the account, nor had Jack Heil or Paul Heil attempted to withdraw it from the account.

30. On January 31, 1996 Christine Ulbrich and Gene Froelich visited the Larry Reid's dealership. They met with Carole Rickards and finance manager Christie Mattson. Both admitted that they should not have given the MSO to Jack Heil but they

thought the Deputy Registrar would collect both the sales tax and the registration fee from Jack Heil, and then Larry Reid's would refund those amounts to the customer when he showed proof of payment. They both admitted this was a unique situation and one they would not handle in a similar manner again.

31. By letter dated February 7, 1996, Katherine Burke Moore, Director of Driver and Vehicle Services, notified Paul Heil of the Department's intent to discontinue the appointment as deputy registrar. The letter cited violations of Minnesota Statutes sections 297B.06 (issuing plates or certificate without payment of the sales tax), 168.10 subd 3(5) (knowingly making a false statement in an application) and 168A.30 (criminal fraud in connection with an application). Unless Heil requested administrative review or a formal hearing, the discontinuance would take effect on March 8.

32. Heil did request review, and an administrative review hearing was held before a Department hearing examiner on March 21, 1996. Paul Heil was represented by an attorney. The hearing examiner issued her Findings of Fact, Conclusion of Law and Recommendation on May 6, 1996. Exceptions were filed by Heil, and a reply was filed by the Department. On July 8, 1996, Department of Public Safety Commissioner Donald E. Davis ordered discontinuance of the deputy registrar appointment.

33. On July 10, 1996 Deputy Registrar # 157 requested a contested case hearing before an Administrative Law Judge. On October 29, 1996, the Department issued a Notice of and Order for Hearing, setting the hearing in the matter for December 3, 1996. By consent of all parties, the hearing date was changed to January 21, 1997.

34. The State has withdrawn its charge of criminal fraud in violation of Minn. Stat. § 168A.30 (1994).

35. The Department acknowledges that all deputy registrars make some errors in the PS2000s or other forms which they submit. The Department tracks these errors, and watches for error rates that exceed certain limits. There is no allegation that Paul Heil's error rate is unusually high or that he is a "bad" deputy registrar, with the exception of this one transaction.

PERTINENT STATUTORY AND RULE EXCERPTS

Minn. Stat. § 168.33, subd. 2 (1994) reads:

The registrar may appoint, and for cause discontinue, a deputy registrar . .
. as the public interest and convenience may require . . .

Minn. Stat. § 168.10, subd. 3(5)(1994) states "[I]t shall be unlawful for any person: . . . to knowingly make a false statement. . .in any such application [for registration of a motor vehicle]."

Minn. Stat. § 297B.06 (1994) reads:

No registration plates or certificate shall be issued by the motor vehicle registrar for the ownership or operation of any motor vehicle to any applicant for registration . . . unless the tax imposed by section 297B.02 shall be paid by the applicant to the motor vehicle registrar.

Minn. Rule pt. 7406.0600 (1994), regarding penalties for deputy registrars, reads as follows:

The registrar shall revoke the appointment of any deputy registrar who violates any requirement of Minnesota Statutes, section 168.33 or this chapter, unless the violation is corrected or discontinued or any deficiency supplied within 30 days after the registrar has given notice to the deputy registrar of the violation.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of the Department of Public Safety have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.06, 14.50 & 299A.01 (1995).

2. The appropriate statutory standard to use in evaluating the conduct at issue here is the standard in effect at the time of the transaction, namely, Minn. Stat. §§ 168.33, subd. 2 (1994); 168.10, subd. 3(5) (1994); 297B.06 (1994) and Minn. R. 7406.0600 (1994).

3. Deputy Registrar #157 did violate Minn. Stat. § 168.10, subd 3(5) (1994) by knowingly making a false statement on a motor vehicle registration application. See, Memorandum.

4. Deputy Registrar #157 did violate Minn. Stat. § 297B.06 (1994) by issuing registration plates without collecting the sales tax due on the vehicle. See, Memorandum.

5. The actions of Deputy Registrar #157 regarding the Jack Heil motor vehicle registration transaction, under all of the facts and circumstances which existed at the time of that transaction, do not rise to the level of “cause” warranting discontinuance of the deputy registrar appointment within the meaning of Minn. Stat. § 168.33, subd 2 (1994). See, Memorandum.

6. The Commissioner of Public Safety is not required to revoke the deputy registrar appointment in the event of a violation of the above-cited statutes or rule. He

is authorized to exercise discretion in deciding whether to discipline a deputy. The Commissioner also has authority to impose lesser sanctions, such as suspension of an appointment, in lieu of revocation, if he finds that the circumstances warrant some lesser penalty. See, Memorandum.

Based on the foregoing conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

That the Commissioner of Public Safety DISMISS the proposed discontinuance of the appointment of Deputy Registrar #157 .

Dated this _____ day of February, 1997.

ALLAN W. KLEIN
Administrative Law Judge

Tape Recorded, no transcript prepared.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

This case began with a suspicion that Paul Heil, the deputy registrar, was engaged in a plot with his nephew, Jack Heil, to defraud the State out of the sales tax due on Jack's new car. When Larry Ollila and Gene Froelich confronted Paul Heil with this suspicion, Heil lost his cool and both he and Ollila became upset. Communications and explanations essentially stopped, and for the last year, Heil has been faced with the prospect of having his business closed down. A review of the facts indicates that this is too strong a sanction for the wrong which Heil committed. The emotional costs and attorney's fees which Heil has had to bear over the past year are sanction enough for his act. The Administrative Law Judge is certain that Paul Heil will never make the same mistake again.

Paul Heil had no intent to defraud the State. He had no intent to assist his nephew in defrauding the State. His nephew had no intent to defraud the State. The nephew was just trying to be loyal to his uncle, and take his registration business to

him. The uncle was just trying to help his nephew avoid another trip back to the dealer's to deal with paperwork difficulties. The sales tax had been financed, and the funds would soon be in the hands of the dealer, well within the time to get them forwarded on to the state. Paul Heil assumed that the dealer would send the funds in to the State, and the whole matter would be taken care of.

If the PS2000 form had a place to indicate some explanation for the sales tax issue, Heil would have used it to explain this unusual transaction. But the form did not have any such space, and Paul Heil did not provide any explanation of why there was no sales tax accompanying the form. Instead, he made the mistake of indicating that the tax had been paid to another state, which was the only method obvious from the form to explain why the tax did not accompany the paperwork. But in an attempt to show what had really happened, Paul Heil attached the purchase agreement, and highlighted the tax amount to indicate that it was being financed. This was inadequate, and should not have been done. Paul Heil made a mistake in judgment. Nevertheless, knowing that the amount of the sales tax had been included in the amount of the loan taken out by his nephew and knowing that the loan money would be delivered to the Larry Reid dealership, Paul Heil assumed the dealer would pay the sales tax due.

All parties to the transaction, Paul Heil, Larry Reid's and the Division of Motor Vehicles admit this was a unique situation and one that they had never seen before. Both Paul Heil and Larry Reid's readily acknowledge that they will never process another transaction like this again.

What Paul Heil did was wrong, but it does not rise to the level of cause required to discontinue the deputy registrar appointment.

Minn. Stat. § 168.33, subd. 2 (1994) provides discontinuance for cause may occur when in the "public interest" and "convenience". The public interest and convenience will not be served by discontinuing this appointment. To close down this long-standing business for this one infraction does not promote the public interest in equity and fairness. Moreover, the Commissioner does have authority to impose a lesser sanction, one that is more appropriate for the wrong.

In the fall of 1995, before any of the acts discussed above had occurred, the Department gave notice of its intent to amend its rules governing deputy registrars. In particular, the above-quoted rule was proposed to be expanded in detail. The newly proposed rule provided for a range of disciplinary actions, from correction orders to immediate suspensions. It also proposed detailed criteria to guide the registrar in disciplinary proceedings. In connection with the proposed change in the rule, the Department prepared a Statement of Need and Reasonableness, which stated (at pages 48-49):

Under the current rules, the only method of discontinuing a deputy registrar appointment is through revocation under part 7406.0600.

* * *

The proposed rule sets forth a system of progressive discontinuance that bases the registrar's action on the type of violation committed instead of having revocation be the only method of enforcement. The proposed rule is necessary because the current revocation section is inadequate to handle the discontinuance matters of deputy registrars.

The current method of enforcement is inadequate, because not all violations of Minnesota Statutes, section 168.33, or of this chapter [of rules] warrant the severe action of revocation. There are some violations that are less severe and require enforcement by the registrar, but not revocation of the appointment. Second, violations that warrant revocation should not be allowed to be corrected and some violations that are committed cannot be corrected as the current rule allows.

* * *

The proposed system of progressive enforcement is reasonable because it fits within the statutory framework of Minnesota Statutes, section 168.33, subdivision 2. Under that statute, the registrar has the authority to discontinue a deputy registrar for cause as the public interest and convenience may require. The statute does not specify by which method the discontinuance shall take place. However, the method of discontinuance should be in the public interest. It is in the public interest to have levels of discontinuance to allow the registrar to take the necessary action that is appropriate to the severity of the violation committed by a deputy registrar. In that way, the registrar is able to effectively regulate the operation of the deputy registrar office that is most beneficial to the public.

* * *

Therefore, the rule is reasonable because it conforms to, and is consistent with, the legislative intent of the statute. The proposed rule is consistent with, and is not contrary to the provision of the statute, and does not defeat the purpose of the statute because it provides the public with the most beneficial and efficient method of enforcement of the operation of a deputy registrar system.

Although the rule in effect at the time of the violation only provided for revocation, and did not mention lesser penalties such as suspension, the Department had already recognized that the statute does give it the authority to impose a variety of

disciplinary methods, ranging from correction orders to immediate suspension pending revocation. This position is in accord with common sense, which suggests that if the legislature is willing to allow the Commissioner to revoke for "cause", limited only by the standard "as the public interest and convenience may require", the legislature has impliedly authorized the imposition of lesser penalties of the same type, such as suspension, if the circumstances warrant a lesser penalty.

Since the Department has discretion whether to discontinue the appointment of Deputy Registrar #157, and the Department has failed to carry its burden to prove that the deputy registrar's actions rise to the level of cause justifying revocation, and since the Department has, in effect, levied a fine against Heil in the amount of attorney's fees he has already had to pay, and finally, since Paul Heil will never repeat his mistake, the Administrative Law Judge believes the fairest resolution of this matter is to dismiss it.

AWK